

FIRST DIVISION

[G.R. NO. 162331, November 20, 2006]

**LEPANTO CONSOLIDATED MINING CO., PETITIONER, VS. WMC
RESOURCES INT'L. PTY. LTD., WMC PHILIPPINES, INC. AND
SAGITTARIUS MINES, INC., RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure, assailing the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 74161, dated 21 November 2003, which dismissed herein petitioner's Petition for Review of the Decision^[2] of the Office of the President dated 23 July 2002 affirming in *toto* the Order^[3] of the Secretary of the Department of Environment and Natural Resources (DENR) dated 18 December 2001 approving the application for and the consequent registration of FTAA No. 02-95-XI from WMC Philippines to Sagittarius Mines, Inc.

On 22 March 1995, the Philippine Government and WMC Philippines, the local wholly-owned subsidiary of WMC Resources International Pty. Ltd. (WMC Resources) executed a Financial and Technical Assistance Agreement, denominated as the Columbio FTAA No. 02-95-XI (Columbio FTAA) for the purpose of large scale exploration, development, and commercial exploration of possible mineral resources in an initial contract area of 99,387 hectares located in the provinces of South Cotabato, Sultan Kudarat, Davao del Sur, and North Cotabato in accordance with Executive Order No. 279 and Department Administrative Order No. 63, Series of 1991.

The Columbio FTAA is covered in part by 156 mining claims held under various Mineral Production Sharing Agreements (MPSA) by Southcot Mining Corporation, Tampakan Mining Corporation, and Sagittarius Mines, Inc. (collectively called the Tampakan Companies), in accordance with the Tampakan Option Agreement entered into by WMC Philippines and the Tampakan Companies on 25 April 1991, as amended by Amendatory Agreement dated 15 July 1994, for purposes of exploration of the mining claims in Tampakan, South Cotabato. The Option Agreement, among other things, provides for the grant of the right of first refusal to the Tampakan Companies in case WMC Philippines desires to dispose of its rights and interests in the mining claims covering the area subject of the agreement.

WMC Resources subsequently divested itself of its rights and interests in the Columbio FTAA, and on 12 July 2000 executed a Sale and Purchase Agreement with petitioner Lepanto over its entire shareholdings in WMC Philippines, subject to the exercise of the Tampakan Companies' exercise of their right of first refusal to purchase the subject shares. On 28 August 2000, petitioner sought the approval of the 12 July 2000 Agreement from the DENR Secretary.

In an Agreement dated 6 October 2000, however, the Tampakan Companies sought to exercise its right of first refusal. Thus, in a letter dated 13 October 2000, petitioner assailed the Tampakan Companies' exercise of its right of first refusal, alleging that the Tampakan Companies failed to match the terms and conditions set forth in the 12 July 2000 Agreement.

Thereafter, petitioner filed a case^[4] for Injunction, Specific Performance, Annulment of Contracts and Contractual Interference with the Regional Trial Court of Makati, Branch 135, against WMC Resources, WMC Philippines, and the Tampakan Companies. WMC Philippines and the Tampakan Companies moved for the dismissal of said case. Said Motion to Dismiss having been denied, WMC Philippines challenged the order dismissing the Motion on appeal^[5] before the Court of Appeals which subsequently ordered the dismissal of the case on the ground of forum shopping in this wise:

Nevertheless, the Court finds that private respondent is guilty of forum-shopping. There is forum-shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The principle applies not only with respect to suits filed in courts but also in connection with litigation commenced in the courts while an administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling.

In this case, petitioners argue that private respondent is guilty of forum shopping for having lodged the complain before respondent Court pending action by the Secretary of the DENR through the Mines and Geo-Sciences Bureau (MGB) on its approval of the Sale and Purchase Agreement dated July 12, 2000. Private respondent on the other hand, opposes the foregoing contention arguing that the MGB will be merely exercising its administrative not quasi-judicial power.

The action before respondent court was filed by private respondent to compel petitioner WMC Resources to convey its equity in WMC Phils. and Hillcrest to the former. Meanwhile, in the case before the MGB, private respondent sought the approval of Sale and that the MGB's authority over the case is purely administrative, but further review shows that private respondent raised contentious issues which need resolution by the MGB before it can recommend any approval to the Secretary of the DENR. Particularly, in its letter dated October 13, 2000 to the Secretary of the DENR, private respondent posed its objection to the approval of the Sales and Purchase agreements between WMC Resources and the Tampakan Companies, asserting that the latter failed to validly exercise its right of first refusal. Also, in its letter to the Director of the MGB dated December 8, 2000, private respondent spelled out in detail its reasons for objecting to the agreement between WMC Resources and the Tampakan Companies, and in the same breath, argued for the approval of its own contract. And because of the opposing claims posited by private respondent and petitioners, the MGB was constrained to require the parties to submit their respective comments. At the juncture, the MGB's authority ceased to be administrative. Evidently, the MGB has to

review all these opposing contentions and resolve the same. A resolution of the MGB on which contract to recommend or endorse to the Secretary of the DENR for approval will necessarily include a declaration on the validity of the different Sale and Purchase Agreements executed between the disagreeing parties, as well as on the exercise of the Tampakan Companies exercise of its right of first refusal and its qualification as a contractor under the FTAA. Even the MGB is aware that the dispute revolves around these sales and purchase agreements. Hence, it cannot be gainsaid that the MGB will be exercising its quasi-judicial powers in resolving the conflict before it. Whether the MGB can validly exercise such jurisdiction over the controversy is another issue but nonetheless immaterial in determining whether private respondent is guilty of forum-shopping. What is determinative is the filing of two (2) separate actions in different for a based principally on the same cause on the supposition that one or the other court would make a favorable disposition. Thus, it is not highly unlikely that respondent Court and MGB will come up with conflicting pronouncements on the dispute, thereby creating a quandary as to which one will prevail. Private respondent's act undisputably constitutes a clear case of forum-shopping, a ground for summary dismissal with prejudice of the action. The respondent court committed grave abuse of discretion in refusing to dismiss Civil Case No. 01-087 on ground of forum-shopping.^[6]

With the denial of petitioner's Motion for Reconsideration, the case^[7] was elevated to this Court. In a Decision dated 24 September 2003, the Court affirmed the Decision of the appellate court and dismissed the petition. In said Decision, the Court elucidated that:

True, the questioned agreements of sale between petitioner and WMC on one hand and between WMC and the Tampakan Companies on the other pertain to transfer of shares of stock from one entity to another. But said shares of stock represent ownership of mining rights or interest in mining agreements. Hence, the power of the MGB to rule on the validity of the questioned agreements of sale, which was raised by petitioner before the DENR, is inextricably linked to the very nature of such agreements over which the MGB has jurisdiction under the law. Unavoidably, there is identity of reliefs that petitioner seeks from both the MGB and the RTC.

Forum shopping exists when both actions involve the same transactions, same essential facts and circumstances and raise identical causes of actions, subject matter, and issues. Such elements are evidently present in both the proceedings before the MGB and before the trial court. The case instituted with the RTC was thus correctly ordered dismissed by the appellate court on the ground of forum shopping. Besides, not only did petitioner commit forum shopping but it also failed to exhaust administrative remedies by opting to go ahead in seeking reliefs from the court even while those same reliefs were appropriately awaiting resolution by the MGB.^[8]

In the interim, on 10 January 2001, contending that the 12 July Agreement between petitioner and WMC Philippines had expired due to failure to meet the necessary preconditions for its validity, WMC Resources and the Tampakan Companies

executed another Sale and Purchase Agreement, where Sagittarius Mines, Inc. was designated assignee and corporate vehicle which would acquire the shareholdings and undertake the Columbio FTAA activities. On 15 January 2001, Sagittarius Mines, Inc. increased its authorized capitalization to P250 million. Subsequently, WMC Resources and Sagittarius Mines, Inc. executed a Deed of Absolute Sale of Shares of Stocks on 23 January 2001.

After due consideration and evaluation of the financial and technical qualifications of Sagittarius Mines, Inc., the DENR Secretary approved the transfer of the Columbio FTAA from WMC Philippines to Sagittarius Mines, Inc. in the assailed Order. According to said Order, pursuant to Section 66 of Department Administrative Order No. 96-40, as amended, Sagittarius Mines, Inc. meets the qualification requirements as Contractor-Transferee of FTAA No. 02-95-XI, and that the application for transfer of said FTAA went thru the procedure and other requirements set forth under the law.

Aggrieved by the transfer of the Columbio FTAA in favor of Sagittarius Mines, Inc., petitioner filed a Petition for Review of the Order of the DENR Secretary with the Office of the President. Petitioner assails the validity of the 18 December 2001 Order on the ground that: 1) it violates the constitutional right of Lepanto to due process; 2) it preempts the resolution of very crucial legal issues pending with the regular courts; and 3) it blatantly violates Section 40 of the Mining Act.

In a Decision dated 23 July 2002, the Office of the President dismissed the petition in this wise:

At the outset, it bears emphasis that quite contrary to the argument of petitioner Lepanto, the above Order of the DENR Secretary is not violative of the Mining Law. Since the subject Columbio FTAA was granted in accordance with the pertinent provisions of Executive Order No. 279 and Department Administrative Order No. 63 on 22 March 1995, or prior to the effectivity of the Philippine Mining Act of 1995, especially as it highlights the non-impairment of existing mining and/or quarrying rights, under Section 14.1 (b) thereof, only the consent of DENR Secretary is required. To hold otherwise would be to unduly impose a burden on transferor WMC and thereby restrict its freedom to dispose of or alienate this property right without due process. Thus, under the Revised Implementing Rules and Regulations of the Philippine Mining Act of 1995, Chapter XXX thereof expressly echoes the guaranty:

"Section 272. Non-Impairment of Existing Mining/Quarrying Rights.- All valid and existing mining lease contracts, permits/licenses, leases pending renewal, Mineral Production Sharing Agreements, FTAA granted under Executive Order No. 279, at the date of the Act shall remain valid, shall not be impaired and shall be recognized by the Government x x x.

x x x Provided, finally, That this provision is applicable only to all FTAA/MPSA applications filed under Department Administrative Order No. 63 prior to the effectivity of the act and these implementing rules and regulations."

As correctly stated by the MGB Director and affirmed by the DENR Secretary, Section 14.1 of the Columbio FTAA provides that the FTAA may be transferred provided that the Secretary consents to the same. Pursuant to Section 112 of the Mining Act and Section 272 of DAO No. 96-40, as amended, on non-impairment of existing mining rights, the subject application for transfer of the Columbio FTAA to Sagittarius requires only the approval of the DENR Secretary.

Moreover, there is no merit in petitioner Lepanto's argument that the DENR Secretary and consequently, this Office, has no jurisdiction over the subject matter in issue. The assailed Order of the DENR Secretary was pursuant to the latter's exercise of the well-entrenched doctrine of primary jurisdiction of administrative agencies.

By virtue of the operation of the doctrine of primary jurisdiction, "courts cannot and will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the tribunal to determine technical and intricate matters of fact and where a uniformity of ruling is essential to comply with the purposes regulatory statute administered." (*Province of Zamboanga del Norte v. Court of Appeals*, 342 SCRA 549 [2000]; *Factoran v. Court of Appeals*, 320 SCRA 530 [1999]; *Brett v. Intermediate Appellate Court*, 191 SCRA 687 [1990]; *Qualitrans Limousine Service, Inc. v. Royal Class Limousine Service*, 179 SCRA 569 [1989]). Thus, even though an action may be lodged in court that is ostensibly for annulment or "rescission of what appears to be an ordinary civil contract cognizable by a civil court," the doctrine of primary jurisdiction still applies. (*Industrial Enterprises, Inc. v. Court of Appeals*, 184 SCRA 426 [1990]).

Section 4, Chapter 1, Title XIV, Book IV of the Administrative Code of 1987 specifies the powers and functions of the DENR. Also, the Philippine Mining Act of 1995 provides that the DENR "shall be the primary government agency responsible for the conservation, management, development, and proper use of the State's mineral resources including those in reservations, watershed areas, and lands of the public domain. The Secretary shall have the authority to enter into mineral agreements on behalf of the Government upon the recommendation of the Director, promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Act." (Chapter II, Section 8). Since an FTAA is "a contract involving financial or technical assistance for large-scale exploration, development and utilization of mineral resources" (*Ibid.*, Chapter 1, Section 3 [r]), any issue affecting the same is indubitably within the primary jurisdiction of the DENR, as in fact, the government enters into FTAA's through the DENR (*Ibid.*, Chapter VI, Section 33).

There is no dispute that the instant case involves and requires the special technical knowledge and expertise of the DENR. In the determination by the DENR of a "qualified person" pursuant to the Philippine Mining Act of 1995, such person must possess the technical and financial capability to